

UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA

THE LOCAL UNION NO. 98, :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS SOUND AND :
COMMUNICATION HEALTH & WELFARE :
FUND, by and through its trustees, BRIAN :
BURROWS, EDWARD COPPINGER, :
BOB HENON, KENNETH MACDOUGALL, :
NATALIE LINDER, MIKE GITLIN : No.
1701 Spring Garden Street :
Philadelphia, Pa 19130 :

and :

THE LOCAL UNION NO. 98, :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS PROFIT SHARING :
FUND, by and through its trustees, THOMAS :
VASOLI, BRIAN BURROWS, FRANCIS :
WALSH, JIM HUSTON, CURTIS FOX, :
JEFF SCARPELLO :
1701 Spring Garden Street :
Philadelphia, PA 19130 :

and :

THE LOCAL UNION NO. 98, :
INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS APPRENTICESHIP :
TRAINING TRUST FUND, by and through its :
trustees, BRUCE SHELLY, MICHAEL NEILL, :
CHRISTOPHER OWENS, JOSEPH :
KALUHIOKALANI, KEVIN OLIVER, NICK :
BRADLEY, EDWARD COPPINGER, BRUCE :
FULTON, BRIAN BURROWS :
1701 Spring Garden Street :
Philadelphia, PA 19130 :

and :

THE LOCAL UNION NO. 98,
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LABOR
MANAGEMENT COOPERATION
FUND, by and through its trustees, JEFF
SCARPELLO, NATALIE LINDER, PAUL
PAIELLO, JOSEPH KALUHIOKALANI
1701 Spring Garden Street
Philadelphia, PA 19130

and

THE NATIONAL ELECTRICAL BENEFIT
FUND, by and through its trustees,
JOHN M. GRAU, JACK F. MOORE,
TRUSTEES OF THE NATIONAL
ELECTRICAL BENEFIT FUND
2400 Research Boulevard, Suite 500
Rockville, MD 20850-3266

Plaintiffs

v

RGB SERVICES, LLC
831 Welsh Road
Philadelphia, PA 19115

and

MICHAEL METSIKAS
831 Welsh Road
Philadelphia, PA 19115

Defendants

COMPLAINT

AND NOW come the plaintiffs by and through their attorneys Marino, Conroy & Coyle and demand of the defendants jointly and severally, plus interest, costs, reasonable attorney's fees and damages for prejudgment delay upon the cause of actions set forth in the following:

JURISDICTION AND VENUE

1. This action is brought pursuant to Employment Retirement Income Security Act [ERISA], 29 U.S.C.A. § 1001 et seq.

2. This Court maintains original jurisdiction over the instant claims pursuant to 28 U.S.C.A. § 1331 and 29 U.S.C.A. § 1132(e) as a result of the claims arising under the laws of United States and seeking redress for violations of the ERISA, 29 U.S.C.A. § 1001 et seq.

3. Venue of this matter is properly laid in this district pursuant to 28 U.S.C.A. §1391(b) and (c) as a result of a substantial part of the events or omissions giving rise to the claims set forth herein having occurred in this judicial district.

THE PARTIES AND RELATED ENTITIES

4. Local Union No. 98, IBEW Sound and Communication Health & Welfare Fund, ("Health & Welfare Fund"), Local Union No. 98, IBEW Profit Sharing Fund ("Profit Sharing Fund"), Local Union No. 98, Joint Apprenticeship and Training Fund ("Training Fund"), the Labor Management Cooperation Fund, the NECA-IBEW National Labor Management Cooperation Fund are multi-employer benefit funds established pursuant to § 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5), and § 3(3) and (37) of ERISA, 29 U.S.C.A. § 1002(3) and (37). Each of the funds aforementioned maintains its principal place of business is located 1701 Spring Garden Street, Philadelphia, PA 19130.

5. National Electrical Benefit Fund ("NEBF") is a multi-employer benefit fund established pursuant to § 302(c)(5) of the LMRA, 29 U.S.C. § 186(c)(5), and § 3(2) and (37) of ERISA, 29 U.S.C. § 1002(3) and (37). NEBF is locally administered by the Pen-Del-Jersey

Chapter of the National Electrical Contractors Association whose principal place of business is located 2400 Research Boulevard, Suite 500, Rockville, MD 20850-3266.

6. The individually named plaintiffs are trustees of the funds aforementioned and are fiduciaries of those Funds within the meaning of ERISA, 29 U.S.C. § 1002(21), and are authorized to advance this action on behalf of the funds for which they are trustees.

7. Defendant RGB Services, LLC, upon information and belief, is a limited liability company for profit incorporated established pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business and registered office for process of service located 831 Welsh Road, Philadelphia, PA 19115. At all relevant times material hereto RGB Services, LLC was engaged in the business of providing electrical services to the consuming public. At all relevant times material hereto RGB Services, LLC acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope of their employment. Defendant RGB Services, LLC regularly conducts business or otherwise utilizes the market place of Philadelphia County.

8. Defendant Michael Metsikas is an adult individual with an address for service of process located 831 Welsh Road, Philadelphia, PA 19115, who, upon information and belief, at all relevant times material hereto was an agent, servant, and employee of defendant RGB Services, LLC. At all relevant times material hereto defendant Michael Metsikas was a principal of defendant RGB Services, LLC. At all relevant times material hereto defendant Michael Metsikas acted within the course and scope of his employment with defendant RGB Services, LLC.

GENERAL ALLEGATIONS

9. Plaintiffs incorporate by reference the previous paragraphs of the Complaint as if set forth fully herein.

10. At all relevant times material hereto RGB Services, LLC has been a party to the multi-employer collective bargaining agreement between Local 98 and the Philadelphia division of the Penn-Del-Jersey Chapter, National Electrical Contractor's Association ("Commercial Agreement") [See a copy of a Letter of Assent and the Voice-Data-Video Agreement attached hereto and marked respectively Exhibit A and B].

11. Pursuant to Article III, Section 3.03(d) of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to furnish monthly reports to Local Union No. 98 listing the names of the members of the Union employed, number of hours of employment and the gross earnings of each.

12. Pursuant to Article VI, Section 6.12 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to contribute to the Local Health and Welfare Plans on behalf of all apprentices and comply with applicable provisions of the Trust Agreement establishing the fund.

13. Pursuant to Article VI, Section 6.12 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to contribute to the National Electrical Benefit Fund (NEBF) on behalf of all apprentices and comply with applicable provisions of the Restated Employees Benefit Agreement and Trust establishing the fund.

14. Pursuant to Article VI, Section 6.14 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to comply with applicable provisions of the Trust

Agreement establishing the Local Union No. 98, IBEW Apprentice Training Fund and to remit monthly payments deductions from its employees to the Apprentice Training fund consistent with the terms of the Trust Agreement and Voice-Data-Video Agreement.

15. Pursuant to Article VII, Section 7.01 of the Voice-Data-Video Agreement, defendant RGB Services, LLC agreed to adopt, be bound by and comply with the applicable provisions of the Trust Agreements establishing the Local Union No. 98, IBEW Sound & Communication Health & Welfare Fund, Local Union No. 98, IBEW Profit Sharing Fund, the Local Union No. 98, IBEW Apprentice Training Fund, Local Union No. 98, IBEW Labor Management Cooperative Committee Fund and the National Electrical Benefit Fund.

16. Pursuant to Article VII, Section 7.02 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to remit monthly to the National Electrical Benefit Fund's designated local collection agent an amount equal to 3% of its gross monthly labor payroll which it paid to is obligated to pay its employees in the bargaining unit and a completed payroll report prescribed by the National Electrical Benefit Fund.

17. Pursuant to Article VII, Section 7.03 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to comply with applicable provisions of the Trust Agreement establishing the Local Union No. 98, IBEW Sound and Communication Health & Welfare Fund and remit monthly payments to the Health & Welfare Fund consistent with the terms of the aforementioned Trust Agreement and the Voice-Data-Video Agreement.

18. Pursuant to Article VII, Section 7.04 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to comply with applicable provisions of the Trust Agreement establishing the Local Union No. 98, IBEW Profit Sharing Fund and to remit

monthly payments to the Profit Sharing Fund consistent with the terms of the aforementioned Trust Agreement and the Voice-Data-Video Agreement.

19. Pursuant to Article VII, Section 7.05 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to comply with applicable provisions of the Trust Agreement establishing the Local Union No. 98, IBEW Apprentice Training Fund and to remit monthly payments to the Apprentice Training fund consistent with the terms of the Trust Agreement and the Voice-Data-Video Agreement.

20. Pursuant to Article VII, Section 7.07 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to comply with applicable provisions of the Trust Agreement establishing the Local Union No. 98, IBEW Labor-Management Cooperation Fund, and remit monthly contributions consistent with the terms of the aforementioned Trust Agreement and the Voice-Data-Video Agreement.

21. Pursuant to Article VII, Section 7.11 of the Voice-Data-Video Agreement, defendant RGB Services, LLC is obligated to pay liquidated damages for delinquent contributions due the Local Union No. 98, designated depository, in the amount of fifteen percent (10%) of the total contribution delinquent, for each month contributions due the Local Union No. 98 Sound and Communication Health & Welfare Fund, the Local Union No. 98 Profit Sharing Fund, and the Local Union No. 98 Apprentice Training Fund are delinquent, plus interest at the rate of ten percent (2%) per month of the total contribution until full payment has been received.

22. Despite repeated demands advanced by the plaintiffs, defendant RGB Services, LLC has failed to timely remit contributions due and owing the aforementioned multi-employer benefit funds and failed to furnish required monthly reports.

COUNT I
ERISA CLAIM - VIOLATION OF 29 U.S.C.A. § 1145
LIABILITY FOR DELINQUENT CONTRIBUTIONS, PENALTY AND INTEREST
(Plaintiffs v RGB Services, LLC)

23. Plaintiffs incorporate by reference the previous paragraphs of the Complaint as if set forth fully herein.

24. Defendant RGB Services, LLC is an employer within the meaning of 29 U.S.C.A. § 1002(5).

25. Defendant RGB Services, LLC is obligated to make contributions and submit withholdings to the aforementioned multi-employer benefit funds pursuant to 29 U.S.C.A. § 1145.

26. Defendant RGB Services, LLC has failed to satisfy its obligation to make contributions and submit withholdings to the aforementioned multi-employer benefit funds in violation of 29 U.S.C.A. § 1145.

27. As a direct and proximate result of defendant RGB Services, LLC's violation of 29 U.S.C.A. § 1145 the aforementioned multi-employer benefit funds have been deprived contribution and remittance totaling an estimated to be a value equal to \$512,806.21.

28. As a direct and proximate result of defendant RGB Services, LLC's violation of 29 U.S.C.A. § 1145 penalty equal to \$50,498.06 and interest in the amount equal to \$208,509.66

has been assessed against RGB Services, LLC, pursuant to section Article III, Section 3.09(b) of the Commercial Agreement.

29. As a direct and proximate result of defendant RGB Services, LLC's violation of 29 U.S.C.A. § 1145 penalty and interest has been assessed against RGB Services, LLC, pursuant to section Article III, Section 3.02 of the Commercial Agreement equal to a value to be determined at trial.

30. As a direct and proximate result of defendant RGB Services, LLC's violation of 29 U.S.C.A. § 1145 plaintiffs have been caused to incur costs and reasonable attorneys fees associated with prosecuting this matter.

WHEREFORE, plaintiffs pray for judgment in their favor and against defendant RGB Services, LLC and the relief which follows:

I. That plaintiffs be awarded recovery of unpaid contributions and deductions owed pursuant to NECA and NEBF Agreements;

II. That plaintiffs be awarded prejudgment interest;

III. That plaintiffs be awarded the penalty assessed pursuant to the Commercial Agreement;

IV. That plaintiffs be awarded the cost of prosecuting this claim as provided for by 29 U.S.C.A. § 1132(g)(1);

V. That plaintiffs be awarded reasonable attorney fees as provided for by 29 U.S.C.A. § 1132(g)(1);

VI. That plaintiffs be awarded liquidated damages as provided for by 29 U.S.C.A. § 1132(g)(2)

- VII. The defendant be enjoined from engaging in future violations of ERISA;
- VIII. That plaintiffs be awarded a constructive trust over the assets of defendant;
- IX. Defendant be ordered to submit to an audit at the request of plaintiffs;
- X. That plaintiffs be awarded further relief as this Court may deem appropriate.

COUNT II
ERISA CLAIM - VIOLATION OF 29 U.S.C.A. § 1145
LIABILITY FOR DELINQUENT CONTRIBUTIONS,
PENALTY AND INTEREST
(Plaintiffs v Michael Metsikas)

31. Plaintiffs incorporate by reference the previous paragraphs of the Complaint as if set forth fully herein.

32. At all relevant times material hereto defendant Michael Metsikas was a functioning director of defendant RGB Services, LLC.

33. At all relevant times material hereto defendant Michael Metsikas engaged in a practice of commingled the assets of the defendant RGB Services, LLC with his own personal funds and used company funds to satisfy personal expenses as set forth below:

(a) Defendant Michael Metsikas issued RGB Services, LLC check # 4505, dated January 7, 2005, made payable to Lisa Miller in the amount equal to \$528.00 to satisfy a personal expense.

(b) Defendant Michael Metsikas issued RGB Services, LLC check # 4512, dated January 13, 2006, made payable to Rodolfo Naranjo in the amount equal to \$1,700.00 to satisfy a personal expense.

(c) Defendant Michael Metsikas issued RGB Services, LLC check # 4517, dated January 20, 2006, made payable to Neboa Saudana in the amount equal to \$4,000.00 to satisfy a personal expense.

(d) Defendant Michael Metsikas issued RGB Services, LLC check # 4516, dated unknown, made payable to Lisa Miller in the amount equal to \$860.86 to satisfy a personal expense.

(e) Defendant Michael Metsikas issued RGB Services, LLC check # 4510, dated January 12, 2006, made payable to Lisa Miller in the amount equal to \$624.00 to satisfy a personal expense.

(f) Defendant Michael Metsikas issued RGB Services, LLC check # 4521, dated January 31, 2006, made payable to Lisa Miller in the amount equal to \$896.50 to satisfy a personal expense.

(g) Defendant Michael Metsikas issued RGB Services, LLC check # 4524, dated February 4, 2006, made payable to Lisa Miller in the amount equal to \$737.00 to satisfy a personal expense.

(h) Defendant Michael Metsikas issued RGB Services, LLC check # 4528, dated February 3, 2006, made payable to Thomas Citro in the amount equal to \$2,560.00 to satisfy a personal expense.

(i) Defendant Michael Metsikas issued RGB Services, LLC check # 4535, dated February 10, 2006, made payable to Lisa Miller in the amount equal to \$939.00 to satisfy a personal expense.

(j) Defendant Michael Metsikas issued RGB Services, LLC check # 4540, dated February 10, 2006, made payable to Lisa Miller in the amount equal to \$803.00 to satisfy a personal expense.

(k) Defendant Michael Metsikas issued RGB Services, LLC check # 4546, dated February 24, 2006, made payable to Lisa Miller in the amount equal to \$924.42 to satisfy a personal expense.

(l) Defendant Michael Metsikas issued RGB Services, LLC check # 4537, dated February 11, 2006, made payable to Michael Metsikas in the amount equal to \$2,725.00 to satisfy a personal expense.

(m) Defendant Michael Metsikas issued RGB Services, LLC check # 4541, dated February 18, 2006, made payable to Michael Metsikas in the amount equal to \$2,675.00 to satisfy a personal expense.

(n) Defendant Michael Metsikas issued RGB Services, LLC check # 4547, dated February 25, 2006, made payable to Michael Metsikas in the amount equal to \$3,875.00 to satisfy a personal expense.

(o) Defendant Michael Metsikas issued RGB Services, LLC check # 4550, dated unknown made payable to Lisa Miller in the amount equal to \$636.50 to satisfy a personal expense.

(p) Defendant Michael Metsikas issued RGB Services, LLC check # 4568, dated March 18, 2006, made payable to Michael Metsikas in the amount equal to \$5,000.00 to satisfy a personal expense.

(q) Defendant Michael Metsikas issued RGB Services, LLC check # 4570, dated March 21, 2006, made payable to Thomas Citro in the amount equal to \$1,600.00 to satisfy a personal expense.

(r) Defendant Michael Metsikas issued RGB Services, LLC check # 4571, dated March 24, 2006 made payable to Lisa Miller in the amount equal to \$550.04 to satisfy a personal expense.

(s) Defendant Michael Metsikas issued RGB Services, LLC check # 4573, dated March 25, 2006, made payable to Michael Metsikas in the amount equal to \$5,150.00 to satisfy a personal expense.

(t) Defendant Michael Metsikas issued RGB Services, LLC check # 4554, dated March 4, 2006, made payable to Michael Metsikas in the amount equal to \$2,550.00 to satisfy a personal expense.

(u) Defendant Michael Metsikas issued RGB Services, LLC check # 4558, dated unknown made payable to Lisa Miller in the amount equal to \$181.00 to satisfy a personal expense.

(v) Defendant Michael Metsikas issued RGB Services, LLC check # 4560, dated March 11, 2006 made payable to Lisa Miller in the amount equal to \$682.00 to satisfy a personal expense.

(w) Defendant Michael Metsikas issued RGB Services, LLC check # 4561, dated March 11, 2006, made payable to Michael Metsikas in the amount equal to \$5,150.00 to satisfy a personal expense.

(x) Defendant Michael Metsikas issued RGB Services, LLC check # 4575, dated April 2, 2006, made payable to Lisa Miller in the amount equal to \$561.00 to satisfy a personal expense.

(y) Defendant Michael Metsikas issued RGB Services, LLC check # 4576, dated April 1, 2006, made payable to Michael Metsikas in the amount equal to \$4,800.00 to satisfy a personal expense.

(z) Defendant Michael Metsikas issued RGB Services, LLC check # 4581, dated April 7, 2006, made payable to Lisa Miller in the amount equal to \$704.00 to satisfy a personal expense.

(aa) Defendant Michael Metsikas issued RGB Services, LLC check # 4609, dated April 21, 2006, made payable to Lisa Miller in the amount equal to \$525.00 to satisfy a personal expense.

(bb) Defendant Michael Metsikas issued RGB Services, LLC check # 4610, dated April 21, 2006, made payable to Aracelis Acosta in the amount equal to \$750.00 to satisfy a personal expense.

(cc) Defendant Michael Metsikas issued RGB Services, LLC check # 4612, dated April 22, 2006, made payable to Michael Metsikas in the amount equal to \$3,275.00 to satisfy a personal expense.

(dd) Defendant Michael Metsikas issued RGB Services, LLC check # 4586, dated April 8, 2006, made payable to Michael Metsikas in the amount equal to \$4,375.00 to satisfy a personal expense.

(ee) Defendant Michael Metsikas issued RGB Services, LLC check # 4601, dated April 16, 2006, made payable to Lisa Miller in the amount equal to \$517.00 to satisfy a personal expense.

(ff) Defendant Michael Metsikas issued RGB Services, LLC check # 4604, dated April 15, 2006, made payable to Michael Metsikas in the amount equal to \$5,150.00 to satisfy a personal expense.

(gg) Defendant Michael Metsikas issued RGB Services, LLC check # 4605, dated April 18, 2006, made payable to CARS BPN in the amount equal to \$10,000.00 to satisfy the purchase of a Toyota Forerunner for personal use.

(hh) Defendant Michael Metsikas issued RGB Services, LLC check # 4619, dated April 29, 2006, made payable to Lisa Miller in the amount equal to \$649.00 to satisfy a personal expense.

(ii) Defendant Michael Metsikas issued RGB Services, LLC check # 4633, dated May 10, 2006, made payable to Lisa Miller in the amount equal to \$660.00 to satisfy a personal expense.

(jj) Defendant Michael Metsikas issued RGB Services, LLC check # 4640, dated May 19, 2006, made payable to Lisa Miller in the amount equal to \$704.00 to satisfy a personal expense.

(kk) Defendant Michael Metsikas issued RGB Services, LLC check # 4642, dated May 20, 2006, made payable to Michael Metsikas in the amount equal to \$2,400.00 to satisfy a personal expense.

(ll) Defendant Michael Metsikas issued RGB Services, LLC check # 4628, dated May 3, 2006, made payable to Lisa Miller in the amount equal to \$511.00 to satisfy a personal expense.

(mm) Defendant Michael Metsikas issued RGB Services, LLC check # 4645, dated May 26, 2006, made payable to Lisa Miller in the amount equal to \$305.00 to satisfy a personal expense.

(nn) Defendant Michael Metsikas issued RGB Services, LLC check # 4650, dated June 3, 2006, made payable to Lisa Miller in the amount equal to \$771.00 to satisfy a personal expense.

(oo) Defendant Michael Metsikas issued RGB Services, LLC check # 4664, dated June 16, 2006, made payable to Michael Metsikas in the amount equal to \$5,290.00 to satisfy a personal expense.

(pp) Defendant Michael Metsikas issued RGB Services, LLC check # 4666, dated June 17, 2006, made payable to Lisa Miller in the amount equal to \$704.00 to satisfy a personal expense.

(qq) Defendant Michael Metsikas issued RGB Services, LLC check # 4673, dated June 28, 2006, made payable to Lisa Miller in the amount equal to \$704.00 to satisfy a personal expense.

(rr) Defendant Michael Metsikas issued RGB Services, LLC check # 4680, dated July 1, 2006, made payable to Lisa Miller in the amount equal to \$784.00 to satisfy a personal expense.

(ss) Defendant Michael Metsikas issued RGB Services, LLC check # 4684, dated July 1, 2006, made payable to Michael Metsikas in the amount equal to \$5,000.00 to satisfy a personal expense.

(tt) Defendant Michael Metsikas issued RGB Services, LLC check # 4712, dated July 29, 2006, made payable to Michael Metsikas in the amount equal to \$1,500.00 to satisfy a personal expense.

(uu) Defendant Michael Metsikas issued RGB Services, LLC check # 4713, dated July 29, 2006, made payable to Lisa Miller in the amount equal to \$200.00 to satisfy a personal expense.

(vv) Defendant Michael Metsikas issued RGB Services, LLC check # 4727, dated August 11, 2006, made payable to Lisa Miller in the amount equal to \$100.00 to satisfy a personal expense.

(ww) Defendant Michael Metsikas issued RGB Services, LLC check # 4730, dated August 12, 2006, made payable to Michael Metsikas in the amount equal to \$7,350.00 to satisfy a personal expense.

(xx) Defendant Michael Metsikas issued RGB Services, LLC check # 4732, dated August 18, 2006, made payable to Careliranber Service in the amount equal to \$1,692.00 to satisfy a personal expense.

(yy) Defendant Michael Metsikas issued RGB Services, LLC check # 4502, dated January 4, 2006, made payable to Michael Metsikas in the amount equal to \$2,650.00 to satisfy a personal expense associated with a vacation in Las Vegas, Nevada.

(zz) Defendant Michael Metsikas issued RGB Services, LLC check # 4506, dated January 11, 2006, made payable to Mary Ellen Milanese in the amount equal to \$50.00 to satisfy a personal expense.

(aaa) Defendant Michael Metsikas issued RGB Services, LLC check # 4737, dated August 19, 2006, made payable to Michael Metsikas in the amount equal to \$6,750.00 to satisfy a personal expense.

(bbb) Defendant Michael Metsikas issued RGB Services, LLC check # 4740, dated August 26, 2006, made payable to Michael Metsikas in the amount equal to \$7,000.00 to satisfy a personal expense.

(ccc) Defendant Michael Metsikas issued RGB Services, LLC check # 4744, dated September 2, 2006, made payable to Michael Metsikas in the amount equal to \$4,656.00 to satisfy a personal expense.

(ddd) Defendant Michael Metsikas issued RGB Services, LLC check # 4751, dated September 9, 2006, made payable to Michael Metsikas in the amount equal to \$5,000.00 to satisfy a personal expense.

(eee) Defendant Michael Metsikas issued RGB Services, LLC check # 4759, dated unknown made payable to Michael Metsikas in the amount equal to \$3,500.00 to satisfy a personal expense.

(fff) Defendant Michael Metsikas issued RGB Services, LLC check # 4777, dated September 30, 2006, made payable to Michael Metsikas in the amount equal to \$5,500.00 to satisfy a personal expense.

(ggg) Defendant Michael Metsikas issued RGB Services, LLC check # 4799, dated October 21, 2006, made payable to Michael Metsikas in the amount equal to \$6,215.00 to satisfy a personal expense.

(hhh) Defendant Michael Metsikas issued RGB Services, LLC check # 4801, dated October 28, 2006, made payable to Thomas Wierzbriki in the amount equal to \$250.58 to satisfy a personal expense.

(iii) Defendant Michael Metsikas issued RGB Services, LLC check # 4814, dated October 28, 2006, made payable to Gail McDyre in the amount equal to \$331.45 to satisfy a personal expense.

(jjj) Defendant Michael Metsikas issued RGB Services, LLC check # 4815, dated October 28, 2006, made payable to Joseph Milligan in the amount equal to \$326.45 to satisfy a personal expense.

(kkk) Defendant Michael Metsikas issued RGB Services, LLC check # 4839, dated November 11, 2006, made payable to Michael Metsikas in the amount equal to \$6,183.00 to satisfy a personal expense.

(lll) Defendant Michael Metsikas issued RGB Services, LLC check # 4827, dated November 4, 2006, made payable to Michael Metsikas in the amount equal to \$6,000.00 to satisfy a personal expense.

(mmm) Defendant Michael Metsikas issued RGB Services, LLC check # 4852, dated November 18, 2006, made payable to Michael Metsikas in the amount equal to \$6,000.00 to satisfy a personal expense.

(nnn) Defendant Michael Metsikas issued RGB Services, LLC check # 4861, dated December 2, 2006, made payable to Michael Metsikas in the amount equal to \$5,500.00 to satisfy a personal expense.

(ooo) Defendant Michael Metsikas issued RGB Services, LLC check # 4875, dated December 16, 2006, made payable to Janet Milanese in the amount equal to \$100.00 to satisfy a personal expense.

(ppp) Defendant Michael Metsikas issued RGB Services, LLC check # 4886, dated January 6, 2007, made payable to Michael Metsikas in the amount equal to \$1,500.00 to satisfy a personal expense.

(qqq) Defendant Michael Metsikas issued RGB Services, LLC check # 4921, dated February 3, 2007, made payable to Michael Metsikas in the amount equal to \$6,400.00 to satisfy a personal expense.

(rrr) Defendant Michael Metsikas issued RGB Services, LLC check # 4940, dated February 24, 2007, made payable to Michael Metsikas in the amount equal to \$5,500.00 to satisfy a personal expense.

(sss) Defendant Michael Metsikas issued RGB Services, LLC check # 4943, dated March 3, 2007, made payable to Michael Metsikas in the amount equal to \$5,780.00 to satisfy a personal expense.

(ttt) Defendant Michael Metsikas issued RGB Services, LLC check # 4949, dated March 10, 2007, made payable to Michael Metsikas in the amount equal to \$3,960.00 to satisfy a personal expense.

(uuu) Defendant Michael Metsikas issued RGB Services, LLC check # 4954, dated March 17, 2007, made payable to Michael Metsikas in the amount equal to \$3,690.00 to satisfy a personal expense.

(vvv) Defendant Michael Metsikas issued RGB Services, LLC check # 4910, dated April 12, 2007, made payable to City of Philadelphia in the amount equal to \$49.00 to satisfy a personal expense.

(www) Defendant Michael Metsikas issued RGB Services, LLC check # 4967, dated March 31, 2007, made payable to Michael Metsikas in the amount equal to \$5,025.00 to satisfy a personal expense.

(xxx) Defendant Michael Metsikas issued RGB Services, LLC check # 4980, dated April 21, 2007, made payable to Michael Metsikas in the amount equal to \$3,150.00 to satisfy a personal expense.

(yyy) Defendant Michael Metsikas issued RGB Services, LLC check # 4990, dated April 28, 2007, made payable to Michael Metsikas in the amount equal to \$5,000.00 to satisfy a personal expense.

(zzz) Defendant Michael Metsikas issued RGB Services, LLC check # 4996, dated May 5, 2007, made payable to Michael Metsikas in the amount equal to \$5,750.00 to satisfy a personal expense.

(aaaa) Defendant Michael Metsikas issued RGB Services, LLC check # 5041, dated June 9, 2007, made payable to Michael Metsikas in the amount equal to \$2,035.00 to satisfy a personal expense.

(bbbb) Defendant Michael Metsikas issued RGB Services, LLC check # 5059, dated June 23, 2007, made payable to Michael Metsikas in the amount equal to \$5,330.00 to satisfy a personal expense.

(cccc) Defendant Michael Metsikas issued RGB Services, LLC check # 5064, dated June 30, 2007, made payable to Michael Metsikas in the amount equal to \$5,940.00 to satisfy a personal expense.

(dddd) Defendant Michael Metsikas issued RGB Services, LLC check # 5067, dated July 7, 2007, made payable to Michael Metsikas in the amount equal to \$4,300.00 to satisfy a personal expense.

(eeee) Defendant Michael Metsikas issued RGB Services, LLC check # 5098, dated August 3, 2007, made payable to Michael Metsikas in the amount equal to \$7,500.00 to satisfy a personal expense.

(ffff) Defendant Michael Metsikas issued RGB Services, LLC check # 5103, dated August 11, 2007, made payable to Michael Metsikas in the amount equal to \$6,675.00 to satisfy a personal expense.

(gggg) Defendant Michael Metsikas issued RGB Services, LLC check # 5124, dated August 25, 2006 made payable to Michael Metsikas in the amount equal to \$5,640.00 to satisfy a personal expense.

(hhhh) Defendant Michael Metsikas issued RGB Services, LLC check # 5129, dated August 30, 2007, made payable to Michael Metsikas in the amount equal to \$1,200.00 to satisfy a personal expense.

(iiii) Defendant Michael Metsikas issued RGB Services, LLC check # 5150, dated unknown made payable to Michael Metsikas in the amount equal to \$6,310.00 to satisfy a personal expense.

(jjjj) Defendant Michael Metsikas issued RGB Services, LLC check # 5162, dated September 15, 2007, made payable to Michael Metsikas in the amount equal to \$7,805.00 to satisfy a personal expense.

(kkkk) Defendant Michael Metsikas issued RGB Services, LLC check # 5176, dated September 22, 2007, made payable to Michael Metsikas in the amount equal to \$8,830.00 to satisfy a personal expense.

(llll) Defendant Michael Metsikas issued RGB Services, LLC check # 5216, dated October 13, 2007, made payable to Michael Metsikas in the amount equal to \$8,760.00 to satisfy a personal expense.

(mmmm) Defendant Michael Metsikas issued RGB Services, LLC check # 5237, dated October 20, 2007, made payable to Michael Metsikas in the amount equal to \$8,540.00 to satisfy a personal expense.

(nnnn) Defendant Michael Metsikas issued RGB Services, LLC check # 5251, dated October 27, 2007, made payable to Michael Metsikas in the amount equal to \$7,500.00 to satisfy a personal expense.

(oooo) Defendant Michael Metsikas issued RGB Services, LLC check # 5241, dated October 23, 2007, made payable to Steve White in the amount equal to \$575.00 to satisfy a personal expense.

(pppp) Defendant Michael Metsikas issued RGB Services, LLC check # 5281, dated November 7, 2007, made payable to unknown in the amount equal to \$250.00 to satisfy a personal expense.

(qqqq) Defendant Michael Metsikas issued RGB Services, LLC check # 5283, dated November 14, 2007, made payable to Michael Metsikas in the amount equal to \$7,500.00 to satisfy a personal expense.

(rrrr) Defendant Michael Metsikas issued RGB Services, LLC check # 5269, dated November 3, 2007, made payable to Michael Metsikas in the amount equal to \$7,500.00 to satisfy a personal expense.

(ssss) Defendant Michael Metsikas issued RGB Services, LLC check # 5296, dated November 17, 2007, made payable to Michael Metsikas in the amount equal to \$7,600.00 to satisfy a personal expense.

(tttt) Defendant Michael Metsikas issued RGB Services, LLC check # 5301, dated November 17, 2007, made payable to Manuel Metsikas in the amount equal to \$2,130.00 to satisfy a personal expense.

(uuuu) Defendant Michael Metsikas issued RGB Services, LLC check # 5347, dated December 15, 2007, made payable to Michael Metsikas in the amount equal to \$7,790.00 to satisfy a personal expense.

(vvvv) Defendant Michael Metsikas issued RGB Services, LLC check # 5333, dated December 8, 2007, made payable to Michael Metsikas in the amount equal to \$6,910.00 to satisfy a personal expense.

(www) Defendant Michael Metsikas issued RGB Services, LLC check # 5379, dated January 8, 2008, made payable to Michael Metsikas in the amount equal to \$636.25 to satisfy a personal expense associated with a vacation in Las Vegas, Nevada.

(xxxx) Defendant Michael Metsikas issued RGB Services, LLC check # 5420, dated February 2, 2008, made payable to Eduardo Saldana in the amount equal to \$8,785.00 to satisfy a personal expense.

(yyyy) Defendant Michael Metsikas issued RGB Services, LLC check # 5416, dated February 1, 2008, made payable to Robert Rosen in the amount equal to \$300.00 to satisfy a personal expense.

(zzzz) Defendant Michael Metsikas issued RGB Services, LLC check # 5443, dated February 14, 2008, made payable to Eduardo Saldana in the amount equal to \$1,000.00 to satisfy a personal expense.

(aaaaa) Defendant Michael Metsikas issued RGB Services, LLC check # 5444, dated February 16, 2008, made payable to Eduardo Saldana in the amount equal to \$7,860.00 to satisfy a personal expense.

(bbbbb) Defendant Michael Metsikas issued RGB Services, LLC check # 5445, dated February 16, 2008, made payable to Marco Rivera in the amount equal to \$975.00 to satisfy a personal expense.

(ccccc) Defendant Michael Metsikas issued RGB Services, LLC check # 5452, dated February 23, 2008, made payable to Eduardo Saldana in the amount equal to \$6,850.00 to satisfy a personal expense.

(dddd) Defendant Michael Metsikas issued RGB Services, LLC check # 5489, dated March 18, 2008, made payable to Nelly Saldana in the amount equal to \$1,500.00 to satisfy a personal expense.

(eeee) Defendant Michael Metsikas issued RGB Services, LLC check # 5511, dated March 29, 2008, made payable to Michael Metsikas in the amount equal to \$800.00 to satisfy a personal expense.

(ffff) Defendant Michael Metsikas issued RGB Services, LLC check # 5512, dated March 29, 2008, made payable to Eduardo Saldana in the amount equal to \$7,405.00 to satisfy a personal expense.

(gggg) Defendant Michael Metsikas issued RGB Services, LLC check # 5542, dated April 12, 2008, made payable to Eduardo Saldana in the amount equal to \$6,935.00 to satisfy a personal expense.

(hhhh) Defendant Michael Metsikas issued RGB Services, LLC check # 5564, dated April 29, 2008, made payable to Eduardo Saldana in the amount equal to \$7,400.00 to satisfy a personal expense.

(iiii) Defendant Michael Metsikas issued RGB Services, LLC check # 5591, dated May 10, 2008, made payable to Eduardo Saldana in the amount equal to \$8,305.00 to satisfy a personal expense.

(jjjj) Defendant Michael Metsikas issued RGB Services, LLC check # 5602, dated May 17, 2008, made payable to Delaware Quarries in the amount equal to \$1,739.36 to satisfy a personal expense associated with gravel and rock supplies utilized at the personal residence of defendant Michael Metsikas.

(kkkkk) Defendant Michael Metsikas issued RGB Services, LLC check # 5625, dated May 29, 2008, made payable to Eduardo Saldana in the amount equal to \$3,000.00 to satisfy a personal expense.

(lllll) Defendant Michael Metsikas issued RGB Services, LLC check # 5637, dated June 5, 2008, made payable to Eduardo Saldana in the amount equal to \$300.00 to satisfy a personal gas expense.

(mmmmm) Defendant Michael Metsikas issued RGB Services, LLC check # 5682, dated June 26, 2008, made payable to Eduardo Saldana in the amount equal to \$200.00 to satisfy a personal expense.

(nnnnn) Defendant Michael Metsikas issued RGB Services, LLC check # 5684, dated June 27, 2008, made payable to Eduardo Saldana in the amount equal to \$600.00 to satisfy a personal expense.

(ooooo) Defendant Michael Metsikas issued RGB Services, LLC check # 5686, dated June 28, 2008, made payable to Eduardo Saldana in the amount equal to \$8,570.00 to satisfy a personal expense.

(ppppp) Defendant Michael Metsikas issued RGB Services, LLC check # 5689, dated July 2, 2008, made payable to Eduardo Saldana in the amount equal to \$200.00 to satisfy a personal gas expense.

(qqqqq) Defendant Michael Metsikas issued RGB Services, LLC check # 5700, dated July 8, 2008, made payable to Eduardo Saldana in the amount equal to \$1,000.00 to satisfy a personal expense.

(rrrrr) Defendant Michael Metsikas issued RGB Services, LLC check # 5707, dated July 11, 2007, made payable to Delaware Quarries in the amount equal to \$4,000.00 to satisfy a personal expense.

(sssss) Defendant Michael Metsikas issued RGB Services, LLC check # 5724, dated July 7, 2008, made payable to Eduardo Saldana in the amount equal to \$200.00 to satisfy a personal gas expense.

(ttttt) Defendant Michael Metsikas issued RGB Services, LLC check # 5740, dated June 23, 2008, made payable to Eduardo Saldana in the amount equal to \$200.00 to satisfy a personal expense.

(uuuuu) Defendant Michael Metsikas issued RGB Services, LLC check # 5744, dated July 26, 2008, made payable to Eduardo Saldana in the amount equal to \$9,745.00 to satisfy a personal expense.

(vvvvv) Defendant Michael Metsikas issued RGB Services, LLC check # 5745, dated July 26, 2008, made payable to Gessika Serranoa in the amount equal to \$4,000.00 to satisfy a personal expense.

(wwwww) Defendant Michael Metsikas issued RGB Services, LLC check # 5756, dated August 2, 2008, made payable to Eduardo Saldana in the amount equal to \$7,975.00 to satisfy a personal expense.

(xxxxx) Defendant Michael Metsikas issued RGB Services, LLC check # 5758, dated August 2, 2008, made payable to Gessika Serranoa in the amount equal to \$3,000.00 to satisfy a personal expense.

(yyyyy) Defendant Michael Metsikas issued RGB Services, LLC check # 5771, dated August 9, 2008, made payable to Eduardo Saldana in the amount equal to \$7,500.00 to satisfy a personal expense.

(zzzzz) Defendant Michael Metsikas issued RGB Services, LLC check # 5752, dated August 5, 2008, made payable to Eduardo Saldana in the amount equal to \$200.00 to satisfy a personal gas expense.

(aaaaa) Defendant Michael Metsikas issued RGB Services, LLC check # 5929, dated October 30, 2008, made payable to Nerida Saldana in the amount equal to \$2,130.00 to satisfy a personal expense.

(bbbbb) Defendant Michael Metsikas claimed a self-employed health insurance deduction in on Line 29 of the 2008 Form 1040 U.S. Individual Income Tax Return submitted to the Department of Treasury – Internal Revenue Service.

34. At all relevant times material hereto defendant RGB Services, LLC failed to observe corporate formality.

35. At all relevant times material hereto defendant Michael Metsikas siphoned funds of the corporation to further a personal agenda and ignored his duty and responsibility as a principal officer of defendant RGB Services, LLC.

36. Defendant Michael Metsikas is obligated to satisfy the payment of delinquent contributions and remittance to the aforementioned multi-employer benefit funds pursuant to 29 U.S.C.A. § 1145 in excess of an amount equal to \$512,806.21.

37. Defendant Michael Metsikas is obligated to satisfy the penalty equal to \$50,498.06 and interest in the amount equal to \$208,509.66 which has been assessed against

RGB Services, LLC, pursuant to section Article III, Section 3.09(b) of the Commercial Agreement.

38. Defendant Michael Metsikas is obligated to satisfy the penalty assessed and interest accumulated pursuant to Article III, Section 3.02 of the Commercial Agreement equal to a value to be determined at trial.

39. Defendant Michael Metsikas is obligated to satisfy the costs and reasonable attorneys fees incurred by the plaintiffs prosecuting this matter at a value to be determined at trial.

WHEREFORE, plaintiffs pray for judgment in their favor and against defendant Michael Metsikas and the relief which follows:

I. That plaintiffs be awarded recovery of unpaid contributions and deductions owed pursuant to NECA and NEBF Agreements;

II. That plaintiffs be awarded prejudgment interest;

III. That plaintiffs be awarded the penalty assessed pursuant to the Commercial Agreement;

IV. That plaintiffs be awarded the cost of prosecuting this claim as provided for by 29 U.S.C.A. § 1132(g)(1);

V. That plaintiffs be awarded reasonable attorney fees as provided for by 29 U.S.C.A. § 1132(g)(1);

VI. That plaintiffs be awarded liquidated damages as provided for by 29 U.S.C.A. § 1132(g)(2);

VII. The defendant be enjoined from engaging in future violations of ERISA;

- VIII. That plaintiffs be awarded a constructive trust over the assets of defendant;
- IX. Defendant be ordered to submit to an audit at the request of plaintiffs;
- X. That plaintiffs be awarded further relief as this Court may deem appropriate.

Respectfully submitted,

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By: SFM6768
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Attorneys for Plaintiffs

Dated: July 20, 2011